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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

Case No. 3:23-md-03084-CRB

**NONPARTY CONSUMER ATTORNEYS OF
CALIFORNIA (CAOC)'S OPPOSITION TO
UBER'S MOTION FOR AN INJUNCTION
AGAINST POLITICAL SPEECH AND A
NONPARTY SUBPOENA INTO A
POLITICAL CAMPAIGN**

This Documents Relates to:

*Jaylynn Dean v. Uber Technologies, Inc. et
al.*, Case. No. 3:23-cv-06708-CRB

Date: January 6, 2025
Time: 10:00 A.M.
Courtroom: 6, 17th Floor

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Uber asks this Court to impose a prior restraint on political speech and to authorize a subpoena into the inner workings of a rival political campaign. As a nonparty, Consumer Attorneys of California (CAOC) appears for the limited purpose of opposing Uber’s motion insofar as it seeks relief against CAOC or CAOC’s independent political action committees.

INTRODUCTION

Uber and CAOC are political rivals. As it has done in other states in recent years, Uber has proposed a ballot initiative that would make it harder for Californians to hold Uber accountable in court. Alongside its initiative, Uber is funding an extensive ad campaign that vilifies plaintiffs’ lawyers in California. In direct response, Uber’s opponents—including CAOC’s political action committees—have launched a counter-campaign: a competing ballot initiative (the “Sexual Assault Against Rideshare Passengers and Drivers Prevention and Accountability Act”) and an accompanying ad campaign titled “Every 8 Minutes.”

Like its efforts elsewhere, Uber’s campaign in California seeks to silence victims by blocking their access to court, preventing them from hiring lawyers to tell their stories, and making it more difficult for them to secure compensation. But Uber isn’t content to stop there. Now it also wants to silence the speech of its political adversaries. Unhappy with the counter-campaign, Uber asks this Court to reach beyond this litigation and hand it a strategic advantage on the political battlefield. Specifically, Uber asks the Court (1) to impose a prior restraint on the political speech of nonparties by enjoining the “Every 8 Minutes” ads, and (2) to bless, in advance, a fishing expedition into its rivals’ campaign.

Even if Uber’s motion had any basis in fact, granting such extraordinary relief in the midst of an ongoing political campaign would constitute an unprecedented infringement of an advocacy organization’s First Amendment rights of free speech and association. Worse still, Uber’s motion is untethered to the facts. Indeed, no part of Uber’s story—that the plaintiffs’ lawyers mounted an ad campaign to taint a jury pool—is remotely true.

First, Uber’s motion withholds essential context: It fails to inform the Court that the ad campaign it wants enjoined is a direct response in a battle over competing ballot

1 initiatives—a battle that Uber itself instigated three months ago when it injected itself into
 2 California politics by proposing a constitutional amendment to curtail access to the courts,
 3 accompanied by a multimillion-dollar ad blitz attacking plaintiffs’ lawyers across the state.

4 *Second*, Uber professes concern about the jury pool for the upcoming bellwether trial
 5 in the case of Jaylynn Dean, who alleges that she was raped by her Uber driver in Arizona.
 6 But none of the television ads at issue aired in Arizona—which makes sense, because they are
 7 aimed at California voters, not Arizona jurors. All the while, Uber continues to pour money
 8 into its own messaging aimed at downplaying its sexual-assault problem.

9 *Third*, Uber makes unfounded allegations about the role of counsel in this MDL. No
 10 lawyer in this litigation had any role in approving, directing, or running the “Every 8 Minutes”
 11 ad campaign. It is overseen by independent political action committees in which they play no
 12 part. And Uber’s allegations about leaks to the *New York Times* are irrelevant. All of the
 13 information in the “Every 8 Minutes” ads, including the statistic published in the *Times*, was
 14 publicly available at the time the ads were created. In any event, the magistrate judge found
 15 no evidence that any lawyer in this MDL was responsible for leaks to the *Times*.

16 This Court need not, and therefore should not, wade into this vigorous political dispute.
 17 There is no basis in existing law, or in this factual record, that could justify suppressing or
 18 subpoenaing nonparties’ political speech. Uber’s motion should be denied.

19 BACKGROUND

20 A. Uber launches a campaign to limit access to the courts by ballot 21 initiative.

22 For years, Uber has engaged in a multi-state campaign to attack the civil justice
 23 system through what courts have described as “deceptive and misleading” ballot initiatives.
 24 *Uber Sexual Assault Survivors for Legal Accountability v. Uber Techs., Inc.*, 562 P.3d 519,
 25 519 (Nev. 2025).¹ Earlier this year, the Nevada Supreme Court struck Uber’s proposed
 26

27 ¹ Unless otherwise specified, all internal quotation marks, alterations, and citations are
 28 omitted from quotations throughout.

1 initiative to impose a 20% cap on attorneys’ fees in all civil cases, concluding that the initiative,
2 framed as *protecting* victims’ rights, impermissibly sought to mislead voters about its
3 effects—including its formula for plaintiffs’ recovery of medical costs. *See id.* Other courts
4 have similarly rejected Uber’s attempt to use “voter confusion” and “obfuscation” to make it
5 harder for people to take Uber to court. *See Koussa v. Att’y Gen.*, 188 N.E.3d 510, 516–17,
6 519–20 (Mass. 2022) (striking Uber’s initiative from the ballot in Massachusetts because it
7 used “murky language” to “redefine the scope of tort recovery for third parties, including
8 those who may have been injured in traffic accidents caused by the negligence of app-based
9 drivers, or even sexually assaulted by them”).

10 Now Uber has its sights set on California. On October 3, 2025, Uber submitted a ballot
11 initiative to the California Attorney General titled the “Protecting Automobile Accident
12 Victims from Attorney Self-Dealing Act.” Gupta Decl., Ex. A. The initiative purports to
13 protect Californians injured in car accidents. In reality, it proposes amendments to the
14 California Constitution that, according to the Attorney General, would “increase victims’
15 burden of proof and limit the amounts they may recover” in personal injury suits. Gupta Decl.,
16 Ex. B. Among other things, the Attorney General’s official summary notes, it would amend
17 the Constitution to limit “victims’ recovery of medical expenses.” *Id.* It would also limit “fees
18 their attorneys may receive,” imposing a flat cap of 25% on contingency fees; the initiative
19 “does not,” however, “restrict fee arrangements for defendants’ attorneys.” *Id.*

20 As part of its attempt to convince Californians to vote for this ballot initiative, Uber
21 has launched a statewide advertising campaign. Uber has already committed \$12 million
22 toward a fundraising committee for the ballot initiative. *See* Gupta Decl., Ex. C at 3. Uber also
23 funds a coalition called “Protecting American Consumers Together” (PACT), an entity that
24 spends millions of dollars annually targeting plaintiffs’ lawyers. Gupta Decl., Ex. D. Just two
25 weeks ago, PACT announced “a new television ad campaign airing in California markets” that
26 spreads the message that “ambulance lawyers are causing chaos.” Gupta Decl., Ex. E at 2–3.
27 PACT plans to spend six figures on ads that “will air across cable television and during NFL,
28

1 NHL and NBA broadcasts, reaching millions of Californians.” *Id.* at 3. Already, PACT has
 2 produced videos disparaging plaintiffs’ lawyers that are aimed at Californians: These include
 3 “California: It’s Time to End Lawsuit Abuse,”² “Billboard Lawyers Ruin Everything,”³ and
 4 “Ambulance Lawyer Con.”⁴ PACT’s videos have racked up hundreds of thousands of views
 5 on YouTube alone. PACT is also producing a documentary, which it plans to release in 2026,
 6 titled “Behind the Settlement: What Really Happens After You Hire a Billboard Lawyer.”
 7 Gupta Decl., Ex. F at 2–3. Uber has also funded PACT campaigns outside of California—
 8 including seven-figure ad campaigns in Georgia and Texas earlier this year—that also target
 9 plaintiffs’ lawyers and so-called “lawsuit abuse.” *See* Gupta Decl., Ex. G at 2; Ex. H at 3.

10 **B. CAOC and its political action committees launch a counter-campaign.**

11 CAOC, a professional organization of plaintiffs’ lawyers, disagrees with Uber’s
 12 messaging about plaintiffs’ lawyers and does not want Uber’s ballot initiative to succeed. In
 13 response to Uber’s proposed ballot initiative in California, CAOC has joined the “Alliance
 14 Against Corporate Abuse,” a consortium that is sponsoring its own ballot initiatives to counter
 15 Uber’s, and has committed millions of dollars toward that effort. Gupta Decl., Ex. C at 3. One
 16 of these ballot initiatives, “The Sexual Assault Against Rideshare Passengers and Drivers
 17 Prevention and Accountability Act,” aims to protect consumers by requiring rideshare
 18 companies like Uber to implement fingerprinting and background checks for their drivers.
 19 Gupta Decl., Ex. I at 3–4. Among other things, it would also limit rideshare companies’ ability
 20 to hire drivers who have been convicted of rape, sexual battery, violent felonies, or domestic-
 21 violence offenses, and it would require these companies to publicly report data on sexual
 22 misconduct and assault involving passengers and drivers. *See id.* at 4–5.

23 _____
 24 ² Protecting American Consumers Together, *California: It’s Time To End Lawsuit*
Abuse (YouTube, June 27, 2025), <https://www.youtube.com/watch?v=BHpm-XGt0PI>.

25 ³ Protecting American Consumers Together, *Billboard Lawyers Ruin Everything,*
 26 *Episode One: Childhood* (YouTube, Sept. 16, 2025), <https://www.youtube.com/watch?v=bNhunogf7f0>.

27 ⁴ Protecting American Consumers Together, *Ambulance Lawyer Con* (YouTube,
 28 Dec. 17, 2025), <https://www.youtube.com/watch?v=DIRyMLdxdDg>.

1 The CAOC PAC is a political action committee that was formed to support and oppose
 2 California political candidates and ballot measures; it is a political adversary of Uber. *See*
 3 Gupta Decl. ¶ 14. The CAOC PAC’s Executive Board is the governing body for several
 4 political committees—collectively known as the CAOC PACs—including the CAOC Initiative
 5 Defense PAC. *See id.*

6 In response to Uber’s campaign in California and in support of the Alliance Against
 7 Corporate Abuse’s ballot initiative, the CAOC PACs launched their own counter-campaign—
 8 the “Every 8 Minutes” ad campaign—in late October, just weeks after Uber introduced its
 9 proposed initiative. *Id.* ¶ 15. The ads quote a *New York Times* article, spotlighting the statistic
 10 that “[a]lmost every 8 minutes a case of sexual assault or sexual misconduct was reported to
 11 Uber.” Gupta Decl., Ex. J at 2; Ex. K at 2. These ads, aimed at Californians, run exclusively
 12 in California. *See* Gupta Decl. ¶ 18; ECF No. 4819-1, London Decl. ¶ 12.

13 Uber speculates (at 1–2), without evidence, that MDL counsel was responsible for
 14 leaking sealed documents to the *New York Times*. But the ads drew only on information that
 15 was publicly available at the time. In any event, lead counsel have certified that they had no
 16 role in leaks to the *Times*, *see* ECF No. 4819-1, London Decl., Ex. 5, and Judge Cisneros held
 17 a hearing and found no evidence that any lawyer in this MDL leaked sealed documents. ECF
 18 No. 3822 at 2 (concluding that “this matter concerns a sealed filing [from] the JCCP”).

19 Nor was any lawyer in this MDL responsible for creating, directing, or approving the
 20 ad campaign. *See* Gupta Decl. ¶ 17–18; ECF No. 4819-1, London Decl. ¶¶ 14–15. It was the
 21 CAOC PACs and their Board that created, directed, and approved the ads. *See* Gupta Decl.
 22 ¶ 15. No member of this MDL’s leadership team sits on the CAOC PAC Board. Gupta Decl.
 23 ¶ 16; *see also* ECF No. 4819-1, London Decl. ¶ 15. The PACs are independent entities from
 24 CAOC, with their own bylaws and governing structures. *See id.* ¶ 14. The CAOC PACs paid
 25 for the ads and created a website for the campaign. *See* Gupta Decl., Ex. J at 2; Ex. K at 2.
 26 Meanwhile, Uber continues to pour money into its own messaging aimed at convincing women
 27 that Uber is safe, sexual-assault problem aside. *See* Gupta Decl., Ex. L.

SUMMARY OF ARGUMENT

Uber asks this Court to impose “the most serious and least tolerable infringement on First Amendment rights”—an unconstitutional prior restraint. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). And Uber’s discovery request, which seeks the disclosure of its political adversaries’ internal strategy, would likewise infringe the First Amendment “right to associate with others to advance one’s shared political beliefs ... , and to do so in private.” *Perry v. Schwarzenegger*, 591 F.3d 1126, 1142 (9th Cir. 2009). These constitutional rights are at their apex where, as here, the targeted speech is an ongoing political campaign. Political speech is, after all, entitled to the “fullest and most urgent application” of First Amendment protection. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339 (2010); *accord Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.”). This Court should deny Uber’s motion to suppress and to subpoena nonparties’ constitutionally protected expression.

ARGUMENT

I. This Court should not censor nonparties’ political speech.

Uber’s request for political censorship fails for two reasons. First, the text of Federal Rule of Civil Procedure 65, and the longstanding common-law principles on which it rests, prohibit the requested relief. Second, even if Uber could obtain injunctive relief against nonparties, it can’t overcome the extraordinarily heavy presumption against a prior restraint targeting the political speech of a rival in an ongoing campaign.

A. No authority supports Uber’s attempt to enjoin nonparties.

“It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *Hansberry v. Lee*, 311 U.S. 32, 40 (1940). This principle, reflecting the “deep-rooted historic tradition that everyone should have his own day in court,” *Richards v. Jefferson Cnty.*, 517 U.S. 793, 798 (1996), is

1 codified in Federal Rule of Civil Procedure 65, which contemplates only two types of
 2 nonparties who may be bound by an injunction—parties who “aid or abet an enjoined party,”
 3 or those who are “in privity with, successors in interest to, or are otherwise legally identified
 4 with the enjoined party.” *Vasquez v. Rackauckas*, 734 F.3d 1025, 1053 n.25 (9th Cir. 2013); *see*
 5 *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930) (courts may only enjoin nonparties
 6 that “either abet the defendant” or are “legally identified with him”). “The text of Rule 65(d)
 7 is exclusive, stating that an injunction can permissibly bind ‘only’ those persons listed in Rule
 8 65(d).” *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1287 (9th Cir. 2009). Along
 9 these lines, multiple district courts within the Ninth Circuit have “refused to bind non-parties
 10 to an injunction, citing Rule 65(d).” *cPanel, LLC v. Asli*, 719 F. Supp. 3d 1133, 1155 n.9 (D.
 11 Or. 2024) (collecting cases).

12 CAOC and its PACs fall into neither of Rule 65(d)’s categories. Uber does not contend
 13 otherwise: It makes no mention of Rule 65(d) or its common-law history. Instead, Uber
 14 asserts (at 8)—without evidence—that counsel in this MDL “made the statements at issue
 15 through CAOC.” Even construing that unsubstantiated assertion as a Rule 65(d) argument,
 16 CAOC and its PACs have not acted “in ... concert” with the MDL leadership team. *See* Fed.
 17 R. Civ. P. 65(d)(2)(C). Recharacterizing political opposition as “acting in concert” would
 18 collapse Rule 65(d)’s carefully drawn limits and permit injunctions against any advocacy
 19 group that shares a common interest with a party to litigation. Nor are CAOC and its PACs
 20 in privity or otherwise legally identified with the plaintiffs in this action. *See* Fed. R. Civ. P.
 21 65(d)(2)(B). The record, despite Uber’s best efforts to argue otherwise, shows the opposite.

22 Uber’s fictionalized version of the facts can’t shoehorn this case into Rule 65’s
 23 requirements. Uber (at 1–4) hypothesizes the following attenuated series of events: (1) the
 24 plaintiffs’ lawyers in this MDL intentionally leak a sealed litigation document to the *New York*
 25 *Times*, in violation of a protective order; (2) the *Times* reports on that document in an unfairly
 26 prejudicial manner; and (3) the same unscrupulous lawyers, through CAOC, mount an ad
 27 campaign designed to disseminate the fruits of that poisonous tree and taint the jury pool for
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1 an upcoming trial in Arizona. Each step of this conspiracy theory is wrong. First, and
 2 crucially, it fails to disclose that the “Every 8 Minutes” campaign is the counterstrike in a
 3 political battle over competing ballot initiatives that Uber itself initiated three months ago.
 4 *See supra* at 4–5. Second, Uber dredges up leak allegations that are irrelevant because the
 5 ads drew only on information that was publicly available at the time. In any event, Uber
 6 implies that the Court found MDL counsel responsible for a leak when, in fact, lead counsel
 7 have attested to the contrary and the magistrate judge found no evidence that any lawyer in
 8 this MDL was responsible. *See supra* at 5. Third, Uber suggests that the MDL leadership
 9 team was responsible for creating, directing, and approving the ad campaign. But, in fact,
 10 they played no role in doing so, and CAOC’s independent PACs launched the campaign only
 11 after Uber proposed its initiative. *See id.* Finally, Uber presents no evidence that any
 12 television ads have aired in Arizona, where the bellwether trial will take place. Nor can it—
 13 the campaign is aimed at California voters, not Arizona jurors, and the ads run only in
 14 California. *See id.*

15 Unable to surmount Rule 65’s text or history, Uber ignores it. The company instead
 16 cites solely cases (at 5, 7) in which courts restrained the speech of a *party* to an action. *See,*
 17 *e.g., Levine v. U.S. Dist. Ct.*, 764 F.2d 590, 595 (9th Cir. 1985) (considering an order that
 18 “applie[d] only to trial participants”); *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1057 (1991)
 19 (explaining that “the speech of *those participating before the courts* could be limited”);
 20 *Standing Comm. on Discipline of U.S. Dist. Ct. v. Yagman*, 55 F.3d 1430, 1442 (9th Cir. 1995)
 21 (analyzing speech made by “lawyers involved in pending cases”); *Murphy-Fauth v. BSNF*
 22 *Ry. Co.*, 2018 WL 5312201, at *2 (D. Mont. Apr. 4, 2018) (same).

23 But these cases all reflect the principle that it may be “appropriate to impose greater
 24 restrictions on the free speech rights of trial participants than on the rights of
 25 nonparticipants,” and that “[t]he case for restraints on trial participants is especially strong
 26 with respect to attorneys.” *Levine*, 764 F.2d at 595. Because “court personnel and attorneys
 27 have a fiduciary responsibility not to engage in public debate that will redound to the
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detriment of the accused or that will obstruct the fair administration of justice,” the First Amendment interests of such “officers of the court” are diminished. *Neb. Press*, 427 U.S. at 601 n.27 (Brennan, J., concurring). But the Supreme Court has carefully drawn a “distinction between participants in the litigation and strangers to it.” *Gentile*, 501 U.S. at 1072–73. And it has never suggested that a prior restraint is appropriate against nonparties to an action, *see id.* at 1072 n.5—particularly nonparties that are the defendant’s own political adversaries.

Rather, consistent with Rule 65 and its common-law origins, the case law on prior restraints makes clear that only parties who “subject[] themselves to the court’s jurisdiction” may be enjoined. *Neb. Press*, 427 U.S. at 609 n.36 (Brennan, J., concurring) (explaining that nonparties, including amici curiae, remain “free to disseminate prejudicial information in the same areas in which petitioners were precluded from doing so”). That conclusion also accords with the First Amendment interests at stake. After all, “a speech restriction that is not bounded by a particular trial or other judicial proceeding”—but targets the political statements of nonparties, in a campaign over ballot initiatives, for an indefinite period of time—“does far more than merely postpone speech.” *Yagman*, 55 F.3d at 1443. It threatens to suppress “speech of public importance.” *Id.*; *see In re Providence J. Co.*, 820 F.2d 1342, 1351 (1st Cir. 1986), *modified on reh’g*, 820 F.2d 1354 (1st Cir. 1987) (underscoring that “[o]ther media,” including nonparties, were not subject to the challenged restraint). The Court should reject Uber’s attempt to bypass Rule 65 and the paramount constitutional interests that it protects.

B. Uber cannot overcome the presumption against stifling political speech.

Even setting aside the bar against enjoining nonparties, Uber cannot overcome the “heavy presumption” against the constitutional validity of prior restraints. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). In line with this presumption, the Supreme Court has said that prior restraints may be appropriate, if at all, in only the rarest of hypothetical circumstances—when necessary to safeguard information about troop movements during wartime, *see Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931), or to “suppress[]

1 information that would set in motion a nuclear holocaust.” *N.Y. Times Co. v. United States*,
 2 403 U.S. 713, 726 (1971) (Brennan, J., concurring). But even where the speech at issue could
 3 impair the government’s own national security interests, *see id.* at 714, or a criminal
 4 defendant’s Sixth Amendment fair trial rights, *see Neb. Press*, 427 U.S. at 561, the Court has
 5 consistently invalidated prior restraints. In doing so, it has reiterated the general rule that
 6 “the First Amendment stands as an absolute bar to the imposition of judicial restraints.” *N.Y.*
 7 *Times*, 403 U.S. at 725 (Brennan, J., concurring). And it has cautioned that “[t]he damage can
 8 be particularly great when the prior restraint falls upon the communication of news and
 9 commentary on current events.” *Neb. Press*, 427 U.S. at 559.

10 Those interests are even further heightened where, as here, the targeted speech is an
 11 ongoing political response to pending ballot initiatives. As explained above, *supra* at 4–5, the
 12 “Every 8 Minutes” campaign was not developed by the plaintiffs’ lawyers to advance their
 13 interests in this MDL. Rather, it emerged as a direct response to Uber’s own ballot initiative,
 14 to lay the ground for the Alliance Against Corporate Abuse’s competing ballot initiative. The
 15 place to resolve that political conflict is the marketplace of ideas, not this lawsuit. That is
 16 axiomatic to the First Amendment, which reflects a “profound national commitment” to the
 17 principle that “debate on public issues “—like those at issue here—“should be uninhibited,
 18 robust, and wide-open.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). And because
 19 political campaigns “operate[] at the core of the First Amendment,” *Boos v. Barry*, 485 U.S.
 20 312, 318 (1988), courts must “err on the side of protecting political speech rather than
 21 suppressing it.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 209 (2014); *see Klein v.*
 22 *City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (chilling political speech for “even a
 23 day or two may be intolerable”). Uber doesn’t confront any of this.

24 Moreover, Uber cannot satisfy the heavy burden of strict scrutiny. Even putting aside
 25 the PACs’ speech interests, which are at a maximum here given their political content, Uber
 26 fails to identify any “material prejudice” it might face. *Gentile*, 501 U.S. at 1075. Uber
 27 presents no evidence that the television ads ran in Arizona, where the upcoming trial will take
 28

1 place, and even if it could, those advertisements only include information that has already
 2 been public since August. *See* Gupta Decl., Ex. K; *see, e.g., Columbia Broad. Sys., Inc. v. U.S.*
 3 *Dist. Ct.*, 729 F.2d 1174, 1180 (9th Cir. 1984) (“[I]t is not enough that publicity might prejudice
 4 one directly exposed to it. If it is to be restrained, the publicity must threaten to prejudice the
 5 entire community so that twelve unbiased jurors can not be found.”).

6 Nor is Uber’s proposed order “narrowly tailored to achieve [its] objectives.” *Gentile*,
 7 501 U.S. at 1076. It targets the political statements of nonparties, on a campaign over ballot
 8 initiatives, for an indefinite period of time. And a prior restraint cannot issue unless it is “clear
 9 that further publicity, unchecked, would so distort the views of potential jurors that 12 could
 10 not be found who would ... fulfill their sworn duty.” *Neb. Press*, 427 U.S. at 569. Uber makes
 11 no such showing here, particularly given the availability of less restrictive means such as voir
 12 dire and jury instructions. *See, e.g., In re Dan Farr Prods.*, 874 F.3d 590, 595 (9th Cir. 2017).
 13 In short, both Rule 65 and the First Amendment foreclose Uber’s proposed censorship of
 14 nonparties’ political speech about pending ballot initiatives.

15 **II. This Court should not pre-approve discovery against the nonparties.**

16 Uber’s extraordinary request (at 9–10) for pre-approval of discovery into the internal
 17 strategy of CAOC and its PACs should be rejected for many of the same reasons.

18 For starters, Rule 45 protects nonparties from subpoenas that would impose an
 19 “undue burden.” Fed. R. Civ. P. 45(d)(1). And “if the sought-after documents are not relevant
 20 nor calculated to lead to the discovery of admissible evidence, then *any burden whatsoever*
 21 imposed would be by definition ‘undue.’” *Compaq Comput. Corp. v. Packard Bell Elecs., Inc.*,
 22 163 F.R.D. 329, 335–36 (N.D. Cal. 1995). Additionally, because nonparties are “powerless to
 23 control the scope of litigation and discovery,” *United States v. Columbia Broad. Sys., Inc.*,
 24 666 F.2d 364, 371 (9th Cir. 1982), “the Ninth Circuit has long held that nonparties subject to
 25 discovery requests deserve extra protection from the courts.” *Intermarine, LLC v. Spliethoff*
 26 *Bevrachtungskantoor, B.V.*, 123 F. Supp. 3d 1215, 1218–19 (N.D. Cal. 2015); *see Dart Indus.*
 27 *Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980) (recognizing that “the word
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1 nonparty serves as a constant reminder of the reasons for the limitations that characterize
2 ‘third-party’ discovery”). But Uber has not even followed the ordinary Rule 45 procedures—
3 serving a subpoena with specific, denominated lines of inquiry and then attempting to defend
4 that subpoena in opposition to a motion to quash. Instead, it asks (at 9–10) this Court to
5 authorize discovery in the abstract, without any particularized requests, relevance showings,
6 or opportunity to object—an approach Rule 45 does not countenance.

7 On top of the heightened protection it affords nonparties, the Ninth Circuit applies
8 “exacting scrutiny” when a subpoena targets the inner workings of a political group. *Perry*,
9 591 F.3d at 1139–40 (“A party who objects to a discovery request as an infringement of the
10 party’s First Amendment rights is in essence asserting a First Amendment privilege.”).
11 “Effective advocacy of both public and private points of view, particularly controversial ones,
12 is undeniably enhanced by group association.” *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).
13 “The First Amendment protects political association as well as political expression,” *Buckley*,
14 424 U.S. at 15, and “[i]mplicit in the right to associate with others to advance one’s shared
15 political beliefs is the right to exchange ideas and formulate strategy and messages, and to do
16 so in private.” *Perry*, 591 F.3d at 1142. For that reason, where, as here, disclosure “would
17 likely have a chilling effect on political association and the formulation of political expression,”
18 the party seeking discovery must “demonstrate a sufficient need for the discovery to
19 counterbalance that infringement.” *Id.* at 1143, 1145. Uber fails here, too. Indeed, instead of
20 proceeding in the normal course (by subpoena), Uber again asks this Court to bless, sight
21 unseen, an open-ended fishing expedition into the political speech of its adversaries.

22 This belated discovery request plainly infringes the First Amendment interests of
23 CAOC and its PACs. “There is no question that participation in campaigns is a protected
24 activity,” and “[c]ompelled disclosure of internal campaign information can deter that
25 participation” and likewise “have a deterrent effect on the free flow of information within
26 campaigns.” *Id.* at 1141–42; accord *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224
27 (1986) (“The Party’s determination of the boundaries of its own association, and of the
28

1 structure which best allows it to pursue its political goals, is protected by the Constitution.”);
 2 *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989) (explaining that a state
 3 may not “interfere with a [political] party’s internal affairs” absent a “compelling state
 4 interest”); *AFL-CIO v. Fed. Election Comm’n*, 333 F.3d 168, 177 (D.C. Cir. 2003)
 5 (“[E]xtensive interference with political groups’ internal operations and with their
 6 effectiveness ... implicate[s] significant First Amendment interests in associational
 7 autonomy.”).

8 Finally, the discovery request also fails the constitutional inquiry—and Rule 45—
 9 because Uber seeks information that is neither relevant nor calculated to lead to the discovery
 10 of admissible evidence. *Cf. Compaq Comput. Corp.*, 163 F.R.D. at 335–36. First, as explained
 11 above, *supra* at 5, neither the bellwether plaintiffs nor any lawyers on this MDL’s leadership
 12 team are associated with CAOC PAC’s Board, the body that approved, directed, and launched
 13 the “Every 8 Minutes” campaign. Second, neither the scope of CAOC’s ad buys nor its editing
 14 of the television ad is relevant to this litigation. And Uber’s final bid (at 10) for “the source for
 15 the assertions made in the campaign” is a transparent attempt to use this litigation as a
 16 vehicle to attack the content of its rival’s political ads and rehash its arguments about the *New*
 17 *York Times* article. This Court should reject Uber’s irrelevant and unconstitutional discovery
 18 request in full.

19 CONCLUSION

20 This Court should deny Uber’s request to suppress the political speech of nonparty
 21 CAOC (and, more accurately, its independent PACs), and it should likewise deny Uber’s
 22 request to subpoena the inner workings of a rival political campaign.

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Respectfully submitted,

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